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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

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18 JAMES JONTE

19 Plaintiff, NO.

20 vs. COMPLAINT FOR DAMAGES AND
21 FLOORTOWN, INC. REINSTATEMENT
22 Defendant. [JURY TRIAL DEMANDED]

23 Plaintiff, James Jonte, respectfully alleges:

24 1. Plaintiff, James Jonte, is a citizen of the United States
25 and a resident of Lake County, California.

26 2. Defendant, Floortown, Inc., is a corporation organized and
27 existing under the laws of the State of California and doing
28 business in Lake County, California, within the Northern District
of California.

29 JURISDICTION AND VENUE

30 3. The subject matter jurisdiction of this Court over this
31 claim exists pursuant to 38 U.S.C. section 4323(b)(3) and 28 U.S.C.
32 section 1331(a), in that this action arises under the laws of the
33 United States, including the Uniformed Services Employment and Re-

1 Employment Rights Act of 1994 ("USERRA"), 38 U.S.C. sections 4301,
2 *et seq.* The supplemental jurisdiction of this court is requested
3 over the second, third and fourth causes of action, pursuant to 28
4 U.S.C. section 1367(a), in that they are so related to the claims
5 over which this court has original jurisdiction that they form part
6 of the same case or controversy under Article III of the United
7 States Constitution.

8 4. Venue is proper pursuant to 38 U.S.C. section 4323(c)(2)
9 in that defendant maintains a place of business within this
10 district. Venue is further proper pursuant to 28 U.S.C. section
11 1391 (b) and(c) because defendant is subject to personal
12 jurisdiction in this district and a substantial part of the events
13 and/or omissions giving rise to this claim occurred within this
14 district.

15 **GENERAL ALLEGATIONS**

16 5. On or about July 12, 1993, plaintiff began working for
17 defendant as a floor covering installer.

18 6. On or about August 19, 2005, plaintiff joined the Army
19 National Guard. Shortly thereafter he informed defendant's
20 president, Daniel Bowen ("Bowen") about this fact. Soon
21 thereafter, plaintiff learned that Bowen had stated that
22 plaintiff's decision would conflict with his company and the
23 scheduling of jobs, and that plaintiff would be fired.

24 7. In response thereto, plaintiff contacted his recruiter,
25 who then left information for Bowen regarding Employee and Employer
26 Rights for the Guard and Reserve. The following day, Bowen called
27 plaintiff into his office and told him he had read the materials.
28 He stated that he was not going to have the military dictate to him

1 how to run his business, that plaintiff could not use the military
2 to keep his job and that he could get fired for other things.

3 8. On or about April 23, 2007, plaintiff received deployment
4 orders for Iraq and so advised Bowen. He left for deployment on or
5 about May 10, 2007.

6 9. While on mobilization, plaintiff sustained an injury, on
7 or about June 8, 2007, and was sent home on or about June 27, 2007,
8 with a torn tendon in his left elbow.

9 10. Thereafter, plaintiff returned to work for defendant
10 during July 2007 and, based on his injury, requested light duty
11 work because of difficulty he had with lifting and pulling heavy
12 objects. Defendant refused to provide him with such work.
13 Plaintiff therefore worked with defendant without restrictions,
14 suffering significant pain associated with the heavy nature of the
15 work.

16 11. On or about July 27, 2007, plaintiff sought medical
17 attention. The physician he saw at that time told plaintiff that
18 he could do no more than light duty work and was not to lift or
19 pull heavy objects. Plaintiff reported this to Bowen, telling him
20 that he could not lift or move furniture. Nevertheless, Bowen
21 refused to give him light duty work and continued to send plaintiff
22 out on jobs which required him to lift or move furniture. As a
23 result, plaintiff's condition worsened.

24 12. On or about August 14, 2007, plaintiff was informed by
25 his doctor that he needed to go on a medical leave of absence that
26 would require three to six months of healing and that he should go
27 on state disability. Plaintiff brought his paperwork in to Bowen
28 that day and commenced his leave.

1 13. In or about early December 2007, plaintiff's June 2007
2 injury was officially approved by the military as having occurred
3 in the line of duty. Based thereon, plaintiff submitted paperwork
4 to defendant so that he could be given Incapacitation Pay for his
5 period of disability from work between August and December 2007.
6 This would have supplemented his state disability benefits so as to
7 entitle him to full compensation from the State for time missed
8 from work due to his service related disability. When defendant
9 completed the paperwork and it was returned to plaintiff, plaintiff
10 noticed that defendant had incorrectly documented his lost wages at
11 a lower rate of pay, and that he had identified plaintiff as a
12 "former employee" for the August to December 2007 time period.

13 14. Based thereon, on or about December 27, 2007, plaintiff
14 contacted Bowen to inquire as to this information. Bowen responded
15 by telling plaintiff that, as far as he was concerned, the last day
16 of plaintiff's employment had been the last day he physically
17 worked at Floortown, in August 2007. At no time prior to December
18 27, 2007, had defendant informed plaintiff that it had terminated
19 his employment. During the same conversation, Bowen again stated
20 that the military was not going to tell him how to run his company.
21 He also accused plaintiff of having turned him in to the
22 California Labor Commissioner for failing to pay overtime,
23 approximately four years earlier.

24 15. Plaintiff is informed and believes that while he was on
25 deployment, defendant gave a raise to other employees which he did
26 not give to plaintiff when he returned from deployment.

27

28

FIRST CAUSE OF ACTION
(Violation of USERRA)

16. Plaintiff incorporates herein, as though fully set forth, the allegations of paragraphs 1-15, above.

5 17. Pursuant to 38 U.S.C. section 4312, plaintiff was
6 entitled to reinstatement with defendant upon his return from
7 active duty. Pursuant to 38 U.S.C. section 4313, defendant was
8 required to accommodate plaintiff's service related disability.
9 Pursuant to 20 C.F.R.1002.191-199, plaintiff was entitled to a pay
10 increase that he would have obtained had he not been deployed.

11 18. Defendant wrongfully refused to accommodate plaintiff by
12 first refusing to provide him with light duty work and then by
13 subsequently appearing to grant him disability leave, but then
14 terminating him while he was on leave.

15 19. Defendant unlawfully retaliated against plaintiff for his
16 uniformed service, by refusing to accommodate plaintiff and by
17 subsequently terminating him.

18 20. Defendant unlawfully failed to pay plaintiff wages to
19 which he was entitled by refusing to pay him a pay increase that he
20 otherwise would have received had he not been deployed.

21 21. As a direct and proximate result of the foregoing
22 conduct, plaintiff has sustained and will continue to sustain a
23 loss of earnings and benefits in an amount to be ascertained.

24 22. As a further direct and proximate result of the foregoing
25 conduct, plaintiff has sustained physical and emotional distress in
26 an amount according to proof.

27 23. In engaging in the foregoing conduct, defendant's conduct
28 was willful, and plaintiff is therefore entitled to an award of

1 liquidated damages equal to damages pursuant to paragraph 22,
2 above.

3 24. By virtue of defendant's conduct, plaintiff was required
4 to retain counsel to vindicate his rights. Accordingly, plaintiff
5 is entitled an award of attorneys' fees.

6 25. Plaintiff is entitled to reinstatement to his position
7 with all rights and benefits that he would have obtained had he not
8 been deployed and subsequently terminated.

9 WHEREFORE, plaintiff prays judgment as set forth below.

10 **SECOND CAUSE OF ACTION**
11 **(Violation of Military and Veterans Code Sections 394, et seq.)**

12 26. Plaintiff incorporates herein, as though fully set forth,
13 the allegations of paragraphs 1-25, above.

14 27. In engaging in the above-described conduct, defendant
15 violated the provisions of California Military and Veterans Code
16 sections 394(a), (b), (c) and 395.06(a).

17 28. As a direct and proximate result of the foregoing
18 conduct, plaintiff has sustained and will continue to sustain a
19 loss of earnings and benefits in an amount to be ascertained.

20 29. As a further direct and proximate result of the foregoing
21 conduct, plaintiff has sustained physical and emotional distress in
22 an amount according to proof.

23 30. In engaging in the foregoing conduct, defendant's conduct
24 was fraudulent, malicious and oppressive, and plaintiff is
25 therefore entitled to an award of punitive damages in an amount
26 according to proof.

27 31. By virtue of defendant's conduct, plaintiff was required
28 to retain counsel to vindicate his rights. Accordingly, plaintiff

1 is entitled an award of attorneys' fees, pursuant to Military and
2 Veterans Code section 394(g).

3 32. Plaintiff is entitled to reinstatement to his position
4 with all rights and benefits that he would have obtained had he not
5 been deployed and subsequently terminated.

6 WHEREFORE, plaintiff prays judgment as set forth below.

7 **THIRD CAUSE OF ACTION**
8 **(Violation of California Fair Employment and Housing Act)**

9 33. Plaintiff incorporates herein, as though fully set forth,
10 the allegations of paragraphs 1-32, above.

11 34. Upon return from deployment, plaintiff was a person with
12 a physical disability and was regarded by defendant as a person
13 with a physical disability which limited major life activities as
14 defined by California Government Code section 12926.

15 35. Defendant terminated plaintiff while he was on medical
16 leave seeking treatment for his physical disability, on account of
17 his physical disability, and/or on account of its perception that
18 he had a physical disability.

19 36. In addition, defendant failed and refused to grant
20 plaintiff a reasonable accommodation of his disability, including
21 failing to provide him light duty work and subsequently terminating
22 him while he was on medical leave.

23 37. As a direct and proximate result of the foregoing
24 conduct, plaintiff has sustained and will continue to sustain a
25 loss of earnings and benefits in an amount to be ascertained.

26 38. As a further direct and proximate result of the foregoing
27 conduct, plaintiff has sustained physical and emotional distress in
28 an amount according to proof.

1 39. In engaging in the foregoing conduct, defendant's conduct
2 was fraudulent, malicious and oppressive, and plaintiff is
3 therefore entitled to an award of punitive damages in an amount
4 according to proof.

5 40. By virtue of defendant's conduct, plaintiff was required
6 to retain counsel to vindicate his rights. Accordingly, plaintiff
7 is entitled an award of attorneys' fees.

8 41. Plaintiff filed an administrative claim with the
9 California Department of Fair Employment and Housing and received
10 his Right to Sue notice from the Department and is properly before
11 this court.

12 WHEREFORE, plaintiff prays judgment as set forth below.

FOURTH CAUSE OF ACTION
(Violation of California Labor Code Section 98.6)

15 42. Plaintiff incorporates herein, as though fully set forth,
16 the allegations of paragraphs 1-41, above.

17 43. In terminating plaintiff because he had filed a claim for
18 unpaid overtime, defendant violated California Labor Code section
19 98.6.

20 44. As a direct and proximate result of the foregoing
21 conduct, plaintiff has sustained and will continue to sustain a
22 loss of earnings and benefits in an amount to be ascertained.

23 45. As a further direct and proximate result of the foregoing
24 conduct, plaintiff has sustained physical and emotional distress in
25 an amount according to proof.

26 46. In engaging in the foregoing conduct, defendant's conduct
27 was fraudulent, malicious and oppressive, and plaintiff is

1 therefore entitled to an award of punitive damages in an amount
2 according to proof.

3 47. By virtue of defendant's conduct, plaintiff was required
4 to retain counsel to vindicate his rights. Accordingly, plaintiff
5 is entitled an award of attorneys' fees.

6 48. Plaintiff is entitled to reinstatement to his position
7 with all rights and benefits that he would have obtained had he not
8 been deployed and subsequently terminated.

9 WHEREFORE, plaintiff prays judgment as follows:

10 1. For reinstatement to employment at a wage rate and with
11 all benefits to which plaintiff would have been entitled had he not
12 been deployed;

13 2. For economic damages, including lost wages and benefits,
14 in an amount according to proof;

15 3. For non-economic damages, including for pain and
16 suffering, in an amount according to proof;

17 4. For punitive damages;

18 5. For reasonable attorneys fees;

19 6. For costs of suit;

20 7. For Pre-judgment interest, if and to the extent allowed
21 by law; and

22 8. For such other and further damages as the court deems
23 just and proper.

24 **JURY DEMAND**

25 Plaintiff hereby demands a jury trial in this action.

26 Dated: July 25, 2008

27 McTERNAN, STENDER & WEINGUS
28 JEFFREY A. HAAS LAW CORPORATION

By

Cliff Weingus
Attorneys for Plaintiff